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Summary record of the 3139th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 18 March 2015, at 10 a.m.

Chairperson: Mr. Salvioli

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Second periodic report of Cambodia (continued) (CCPR/C/KHM/2; CCPR/C/KHM/Q/2 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Cambodia took places at the Committee table.*

2. **Mr. Ben Achour** said that, in the light of comments made by the head of delegation at the previous meeting, he would like to make a number of general points. First of all, he wished to make clear that the Committee's role was to engage in a constructive dialogue with States parties in order to assist them in meeting their obligations and thereby ensure effective protection for the rights set forth in the Covenant. The Committee did not operate as a court and it did not pass judgement on States parties. Second, the reports by NGOs and civil society representatives to which the Committee referred during its dialogue with States parties were publicly available, including on the website of the Office of the United Nations High Commissioner for Human Rights. The Committee did not vouch for the veracity of the information contained in those documents but rather sought to give States parties an opportunity to reply to any allegations made therein. Furthermore, it was important for States parties to engage actively with all stakeholders, such as NGOs, in order to gain a comprehensive view of the human rights situation at the national level. However, at the previous meeting, the head of delegation had given the impression that he was not familiar with the activities of NGOs in Cambodia. He therefore urged the State party to make contact with those organizations and to work with them. He also called on the delegation to reply to a number of questions put by Committee members at the previous meeting that had gone unanswered, including on such important issues as the right to life, impunity for perpetrators of serious human rights violations and alleged political bias among law enforcement agencies. Lastly, he wished to assure the delegation that all his comments had been made in a constructive spirit.

3. **Mr. Rodríguez-Rescia**, referring to the issue of the mental health of persons deprived of their liberty raised during the previous meeting, said that the security reasons cited by the delegation were not justifiable grounds for allowing inmates only 30 minutes of outdoor activity per day. Turning to the delegation's denial of the existence of torture in places of detention, he said that the cumulative effect of cruel, inhuman or degrading treatment could amount to torture and that it was with that in mind that the Committee had raised concerns during the previous meeting about the very poor conditions in prisons. It was important that the State party should take appropriate steps to remedy those conditions with a view to improving the health of inmates. As the interministerial body responsible for the monitoring of places of detention in the State party did not meet the standards required under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Government should establish an independent preventive mechanism. He asked the delegation to confirm whether international bodies, such as the International Federation of Red Cross and Red Crescent Societies, and national civil society organizations were able to carry out monitoring visits to places of detention. He also wished to know what the Government was doing to tackle the problem of drug consumption among prison inmates. Lastly, he asked the delegation to provide updated official statistics on the follow-up given by the prosecution service to complaints of torture and cruel, inhuman or degrading treatment.

4. **Mr. Ney** Samol (Cambodia) said that he first of all wished to clarify that the reason that some questions had gone unanswered at the previous meeting was that there had been insufficient time available to the delegation to address all the issues that had been raised.

He also wished to reaffirm his Government's full commitment to the promotion and protection of human rights. That commitment was demonstrated by, among other things, the free exercise of freedom of expression by an array of national and international media outlets and the presence of thousands of NGOs in Cambodia. Furthermore, since 1993 the State party had received country visits from no less than five Special Rapporteurs on the situation of human rights in Cambodia.

5. Turning to questions that had been raised at the previous meeting, he said that his Government would indeed draw on the lessons learned from the experience of the Extraordinary Chambers in the Courts of Cambodia in order to further develop the national court system. He reiterated his Government's determination to put an end to impunity and to hold the leaders of the Khmer Rouge regime accountable for their acts.

6. Although no specific law was yet in force concerning the rights of lesbian, gay, bisexual and transgender (LGBT) persons, the Government sought to prevent discrimination against those persons. While it was the case that isolated discriminatory acts were committed against LGBT communities by individuals or small groups of people, such acts did not reflect government policy.

7. The State party had ratified the International Convention for the Protection of All Persons from Enforced Disappearance. His Government was committed to meeting its obligations under the Convention and cooperated fully with the Committee on Enforced Disappearances on a regular basis through its Permanent Mission in Geneva. As to the alleged enforced disappearance on 3 January 2014 of Mr. Khem Sophath, the competent national authorities were working tirelessly to establish the facts of the case.

8. Although the State party had not extended a standing invitation to the Special Rapporteur on the rights to freedom of peaceful assembly and of association, that mandate holder had in fact visited Cambodia on several occasions. The budget allocation for persons with mental disabilities was decided taking into account the overall availability of resources and the priorities that had been set. It was important to bear in mind that Cambodia was a least developed country and that the Government was operating under severe budgetary constraints. As to the supposed lack of gender balance within the delegation, such a situation was not uncommon – even within the United Nations system. For instance, all five of the Special Rapporteurs on the situation of human rights in Cambodia to have been appointed since 1993 had been men.

9. In order to fully understand the situation regarding the voting rights of persons with mental disabilities in Cambodia, it was necessary to read paragraphs 230 and 231 of the State party's report (CCPR/C/KHM/2) together. Those paragraphs made clear that the Government did not discriminate against persons with disabilities and that the only such persons not entitled to vote were those who had been declared incapable of exercising their voting rights by the Ministry of Health or a competent institution.

10. **Mr. Mak** Sambath (Cambodia) said that the Government was taking steps to improve gender balance in leadership roles at all levels of the State. Currently, 20 per cent of senior posts in public institutions were held by women. In addition, the Ministry of Women's Affairs was working to mainstream gender equity and to raise awareness of the issues involved. The Government was working hard to promote human rights and ensured that country reports by the Office of the United Nations High Commissioner for Human Rights were made as widely available as possible to the public at large.

11. **Mr. Pol** Lim (Cambodia) said that over four thousand NGOs and civil society associations were operating effectively in Cambodia. The Government was determined to combat impunity and took all reports of killings and cases of enforced disappearance seriously. The competent authorities were working tirelessly to tackle the very large number of historical cases of enforced disappearance dating back to 1979. With reference

to the reported killings of journalists mentioned in paragraph 8 of the list of issues (CCPR/C/KHM/Q/2), he said that the investigating authorities had submitted three case files to the courts.

12. With regard to the level of health of the prison population, he said that some detainees were already ill before they entered the prison system, while others claimed to be ill in order to be sent to hospital. As to the separation of inmates according to categories, the authorities ensured that there was separation between juveniles and adults, untried and convicted prisoners and men and women.

13. **Mr. Iwasawa** asked the delegation to confirm that the Government intended to comply with its obligations to pay the salaries and emoluments of Cambodian personnel of the Extraordinary Chambers in the Courts of Cambodia. He welcomed the statement contained in paragraph 18 of the State party's replies to the list of issues (CCPR/C/KHM/Q/2/Add.1) to the effect that the Office of the Co-Investigating Judges of the Extraordinary Chambers would continue its investigations into case files 003 and 004 without any interference. However, according to information before the Committee, the Government was reportedly interfering with the functioning and independence of the Extraordinary Chambers and the Prime Minister and other ministers were said to have made public statements to the effect that cases beyond 002 should not proceed. He would therefore like to know how the Government planned to ensure, in practice, that the Extraordinary Chambers in the Courts of Cambodia would be able to perform their functions independently without any interference.

14. He noted that, according to reports, land laws were poorly implemented, land concessions continued to be granted for economic reasons and communal land titling procedures were prohibitively complex and expensive. It was also claimed that the interministerial circular mentioned in paragraph 42 of the replies to the list of issues (CCPR/C/KHM/Q/2/Add.1) provided protection only to persons who had already applied for communal land titles. He invited the delegation to comment on those points. The delegation should also describe how the Government ensured that indigenous peoples were consulted prior to the granting of concessions, as well as what was being done to guarantee the continuation of consultations once temporary protection measures had been lifted.

15. **Ms. Seibert-Fohr** asked how the State party intended to increase the number of lawyers and give effect to the rights enshrined in article 14 of the Covenant. She enquired about the reasons behind the 24-hour rule established in article 98 of the Code of Criminal Procedure and the mechanisms in place to ensure that detainees were informed of their rights.

16. She wished to know the extent to which the three laws listed in paragraph 23 of the replies to the list of issues had been accessible to civil society and subject to public debate prior to their adoption. The delegation should elaborate on the composition of the Supreme Council of Magistracy and comment on reports that the Minister of Justice was automatically a member and had the right to appoint other members. The delegation should also indicate whether the Promotion and Career Progress Commission was chaired by the Secretary of State for Justice; it should also specify the role of the Ministry of Justice in allocating the judicial budget and state whether the budget was adequate.

17. She asked what mechanisms were in place to prevent corruption and political interference in the judiciary and what grounds could be invoked for the removal of judges. In particular, she wished to know whether judges could be removed because of the content of their decisions. The delegation should also: outline the legal basis for dismissing the president of Phnom Penh Municipal Court in February 2015, while describing the procedure followed and the role played by the Supreme Council of Magistracy; state

whether disciplinary measures were subject to review; and indicate the extent to which the Government voiced criticism of judicial decisions.

18. She wished to know how frequently confessions provided the basis for criminal convictions and whether they obviated the need to conduct investigations. Noting with concern the information provided in paragraph 26 of the replies to the list of issues, she asked what steps had been taken to combat coercion, how many officials had been prosecuted for extracting confessions and whether law enforcement officers received financial incentives for securing convictions.

19. She asked whether the process of electoral reform had resulted in any concrete changes and, if so, whether they had been debated publicly with the participation of civil society. The delegation should supply information on the composition of the National Election Committee and explain what was done to guarantee its independence. She wished to know what steps had been taken to address alleged irregularities during the 2013 general election and ensure that they did not occur again. In particular, she would appreciate information on any independent inquiries conducted and on any mechanisms to investigate irregularities. She asked whether election laws provided for recounts in polling stations and equal media access for, and use of State resources by, political parties. She also wished to know whether insulting political opponents was punishable under domestic law and, if so, how such provisions were compatible with article 19 of the Covenant. She invited the delegation to respond to claims that opposition parliamentarians had been arrested and charged in 2014 and, if the allegations were true, to provide details on the reasons given and procedures followed.

20. Noting reports that many Khmer Krom and Vietnamese Cambodians were stateless or lacked the necessary documentation to prove their citizenship, she asked what had been done to resolve the issue and inform people about the naturalization process, which she invited the delegation to describe.

21. **Ms. Waterval** expressed concern that the Criminal Code provisions mentioned in paragraph 30 of the replies to the list of issues imposed unnecessary restrictions on the freedoms of expression, peaceful assembly and association. In that connection, she asked how many journalists and human rights defenders had been prosecuted for defamation, disinformation or incitement. The delegation should comment on reports of threats to prosecute journalists under the Criminal Code rather than the more lenient press law. She asked whether the Government would consider amending the Code to ensure compliance with article 19 of the Covenant and urged the State party to bear in mind the provisions of that article when drafting the bill on cybercrime.

22. She invited the delegation to elaborate on the regulations governing the use of freedom parks and comment on reports that roadblocks had been used to prevent access and that peaceful protesters had been arrested and released only after signing documents promising not to participate in future demonstrations. She would also appreciate information on the legal status of municipal security guards and their role in demonstrations. Lastly, the delegation should indicate when the bill on trade unions and the bill on associations and NGOs would be submitted to the National Assembly.

23. **Mr. Rodríguez-Rescia** asked whether the State party would consider amending or repealing article 950 of the Civil Code, which discriminated against divorced women, and lifting the restrictions based on age and income that had been imposed on marriages between foreign men and Cambodian women. Noting that the State party had not yet established a juvenile justice system in accordance with international standards, he asked when the bill on juvenile justice would be adopted.

24. **Mr. Ben Achour** asked what steps were being taken to eliminate child labour and corporal punishment, which was still permissible under article 1,045 of the Civil Code, and improve birth registration by, inter alia, reducing regional disparities.

25. **Mr. de Frouville** asked whether the State party would consider amending the definition of genocide in domestic law, whether genocide and other international crimes were subject to universal jurisdiction and whether additional measures would be adopted to try individuals for crimes committed during the Cambodian genocide and to establish truth and justice.

26. **Ms. Cleveland** asked about the status of the bill on cybercrime and the bill on associations and NGOs. The delegation should indicate whether amendments were planned in response to allegations that the bills contained excessive restrictions and vague language. It should also describe any efforts taken during the drafting process to consult civil society and ensure that the bills were in line with international standards. Noting that the bill on cybercrime was not publicly available, she recalled the importance of transparency in order to protect the rights to information and participation in public affairs, and to avoid undermining public confidence in the law-making process. She also urged the State party to ratify the Optional Protocol, particularly in the light of concerns regarding the independence of the judiciary.

27. **Sir Nigel Rodley**, in reference to paragraph 230 of the State party report (CCPR/C/KHM/2), asked whether there was a blanket ban on prisoners voting and, if so, how such a measure could be reconciled with international provisions, including article 10 of the Covenant, which established that the main purpose of detaining individuals should be their reformation and social rehabilitation.

The meeting was suspended at 11.45 a.m. and resumed at 12.05 p.m.

28. **Mr. Ney** Samol (Cambodia) said that payment of the salaries of national staff working for the Extraordinary Chambers in the Courts of Cambodia had been delayed, not refused. The Government always honoured its commitments and had since paid the outstanding amounts. It had no influence over investigations into case files 002/01, 003 or 004. Disagreements between judges over whether to pursue a case would be resolved in accordance with the agreement that had led to the establishment of the Courts.

29. **Mr. Ith** Rady (Cambodia) said that the country was experiencing a shortage of lawyers. Moreover, most lawyers worked in the private sector and avoided rural and remote areas where the residents could not afford their fees. Therefore, in order to ensure access to legal counsel for all persons the Bar Association of the Kingdom of Cambodia sent officially appointed lawyers to remote areas when necessary. Such appointments were sometimes delayed owing to the limited numbers of lawyers. Currently, persons held in detention were afforded fundamental legal safeguards after 24 hours of their detention but the Ministry of Justice was reviewing the Code of Criminal Procedure with a view to guaranteeing access to a lawyer from the outset of a detention.

30. The Law on the Organization and Functioning of the Courts, the Law on the Supreme Council of Magistracy, and the Law on the Status of Judges and Prosecutors had been in the drafting phase for many years owing to extensive consultation with civil society, but should be presented to Parliament within the following six months. Members had been nominated for the Supreme Council of Magistracy from a range of judicial bodies and most were legal specialists. The list of nominations would be submitted to the King for royal approval before the members were appointed.

31. An anti-corruption unit had been established to combat corruption in the judicial system and two officials of the judiciary had been sentenced in that regard. Another unit under the Supreme Council of Magistracy was competent to receive complaints about and

launch investigations into corruption in the judicial system. The President of the Phnom Penh Municipal Court had been removed from his position following complaints of corrupt activities and the case was under investigation. Confessions obtained under torture were not admissible in a court of law. However, where the individuals concerned or their lawyers could not prove that they had been subjected to acts of torture, the courts usually accepted the confessions.

32. The purpose of the provision in the Civil Code stipulating that women did not have the right to remarry until 120 days had elapsed from the time of their divorce was to protect women and children. Women were entitled to remarry after those 120 days provided they obtained a medical certificate stating that they were not pregnant.

33. Although no separate juvenile justice system was in place, certain provisions in the Criminal Code covered procedures concerning young persons in court cases. Moreover, a law on a juvenile justice system in accordance with international standards had been formulated and would be submitted to the Council of Ministers. In that connection, consultations with civil society and NGOs and been held, and work was being carried out with UNICEF. The challenges in implementing that law could be foreseen and included allocating resources for the construction of rehabilitation centres, training staff in the care of juvenile offenders and providing facilities in remote areas.

34. The minimum working age set out in domestic law was 15 years and regulations prohibiting child labour were widely disseminated throughout the country. The labour inspectorate monitored child labour in workplaces and removed any children found to be working. Initiating prosecutions against employers was complicated, however, since many children worked with the consent of and even alongside their parents. Prosecuting and sentencing the parents was also questionable, as it was likely to result in the abandonment of their children. The law allowed parents to administer minor corporal punishment on their children.

35. **Mr. Pol** Lim (Cambodia) said that the Law on Nationality provided for most residents living legally in the country to apply for Khmer nationality. Under Sub-Decree No. 103 on the civil registry the local authorities were required to register all births. In addition, legislative amendments were being made to enable persons who had lost their identity documents during the Khmer Rouge regime to register and to claim new documents. Freedom of expression was safeguarded for the media and demonstrators. Any protests that were considered to threaten national security or social order were temporarily or permanently suppressed by the authorities. Work had been completed on the draft law concerning NGOs.

36. **Sir Nigel Rodley** expressed concern about the need to prove that acts of torture had been committed in cases of the use of forced confessions as elements of evidence in court proceedings. It was disturbing to note that judges did not automatically make inquiries when allegations were made of confessions extracted under torture because the nature of imprisonment rendered it virtually impossible for victims to prove that they had been subjected to torture. The burden should be on the prosecution to prove that the information was given freely, if that assumption was challenged. If that was not the case in the State party, the Committee would formulate a recommendation to that effect.

37. **Mr. Rodríguez-Rescia** said that the Committee needed more information in response to its various questions. Would the State party make a commitment to passing the draft law on the juvenile justice system which had been pending for many years? The deficiency in the juvenile justice system could only be rectified by making systemic changes. He wondered why the State party did not use existing technology in legal cases involving juvenile offenders. Would the State party also undertake a commitment to allow United Nations agencies and other independent bodies to carry out monitoring visits in

places of detention? Would the State party provide more information on the possibility of granting detainees the right to vote and sufficient access to fresh air? In addition, he was deeply concerned that no legal counsel was provided to detainees for the first 24 hours of their detention and that persons arrested and held in places of deprivation of liberty were not registered, which generated endemic corruption, such as payments to the police so that charges were dropped. He agreed that a culture change was essential in order to properly tackle domestic violence and child labour in the country. Would the State party take all those details into account in policymaking?

38. **Mr. Ney** Samol (Cambodia) wondered whether the Committee members were expecting prescribed answers. He added that domestic law prohibited the vote for all convicted persons and that the State party upheld the presumption of innocence for all persons.

39. **Mr. Mak** Sambath (Cambodia) thanked the Committee for the constructive dialogue. The delegation had made efforts to answer all questions honestly. It looked forward to further cooperation with the Committee and would take account of all the Committee's recommendations.

40. **The Chairperson** said that the only reason the Committee requested further information was to gather a full picture of the country's human rights situation in order to be in a position to cooperate and assist the State party in fulfilling its international obligations. Delegations before the Committee represented all three branches of power – not only the Government of the country. He thanked the distinguished delegation for their engagement with the Committee and expressed the hope that the Committee could consider the State party's next periodic report before too long.

The meeting rose at 1.05 p.m.